

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 19, 2008

STATE OF TENNESSEE v. HAROLD KAY SMITH

Appeal from the Circuit Court for Bedford County
No. 16005 Lee Russell, Judge

No. M2007-00408-CCA-R3-CD - Filed April 23, 2008

The defendant, Harold Kay Smith, appeals from the Bedford County Circuit Court's judgment of conviction of driving on a revoked license (DRL), second offense. He challenges the sufficiency of the evidence, but we affirm the circuit court's judgment.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JOHN EVERETT WILLIAMS, J., joined.

Brenda S. Bramlett, Shelbyville, Tennessee, for the appellant, Harold Kay Smith.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Charles Frank Crawford, Jr., District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Case number 50070-118-97 in general sessions court resulted in the defendant's conviction of driving under the influence (DUI) on February 2, 2005, and a sentence that included a driver's license revocation. On August 17, 2005, the defendant entered a plea of guilty to driving on a revoked license, the latter being the revocation that occurred on February 2, 2005, in the DUI case. On August 25, 2005, the State apparently filed a probation revocation proceeding in the DUI case when it prosecuted the defendant for DRL in case number 55998-118-355, a second-offense DRL case. The record indicates that the defendant was convicted in general sessions court of DRL, second offense, on February 24, 2006, in case number 55998-118-355. On March 6, 2006, the defendant filed a notice of appeal in case numbers 55998-118-335 and 50070-118-97.

The circuit court found that the revocation proceeding in the DUI case remained unresolved and pending in the general sessions court. The circuit court, therefore, dismissed any portions of the appeal from the general sessions court that related to the DUI and the revocation of

the DUI probation. Following a bench trial, the circuit court entered a judgment on January 14, 2007, convicting the defendant of DRL, second offense, a Class A misdemeanor. The court sentenced the defendant to six months, suspended upon serving 60 days in jail. The defendant moved for a new trial on January 18, 2007, and the trial court overruled the motion on February 2, 2007. The defendant filed a timely appeal to this court.¹

On appeal, the defendant claims that the evidence was insufficient to support the conviction of DRL because the defendant drove his vehicle at the time in question within the scope of a valid restricted driver's license.

In the circuit court bench trial, David Sakich, a Bedford County Sheriff's Sergeant, testified that he had arrested the defendant on the charge that resulted in the 2005 DUI conviction, which in turn resulted in a revocation of the defendant's driver's license. He testified that in April 2005 he arrested the defendant for DRL. This arrest led to a DRL conviction on August 17, 2005.

On August 24, 2005, Sergeant Sakich saw the defendant driving a vehicle on Lane Parkway in front of the sheriff's office. Sergeant Sakich pulled the defendant over and arrested him for DRL. The defendant told Sergeant Sakich that he had a restricted license but that he did not have it with him. Sergeant Sakich testified that the defendant stated that he was "going grocery shopping, and then I think to the horse show grounds."

Sergeant Sakich testified on cross-examination that later in the evening on August 24, 2005, the defendant's wife brought the sergeant the defendant's "temporary classified driver's license" and an insurance identification card. The sergeant testified that he concluded that the temporary license was invalid because it was issued on the heels of the DUI conviction, not the August 17 DRL conviction.

Lewisburg police officer Billy Prince testified that he was a sergeant with the Bedford County Sheriff's Office on August 24, 2005, when he arrived on the scene of Sergeant Sakich's detention of the defendant. Officer Prince overheard the defendant say "[h]e was going to the grocery store."

The defendant testified that in August 2005 he was "involved in the residential developing of ranchettes." He also testified, "I build steel buildings and manufacture large commercial warehouses." When Sergeant Sakich stopped him on August 24, 2005, he was going to the Tennessee Walking Horse Celebration (the celebration) "to post some brochures throughout the barn."

The defendant testified that on August 17, 2005, he took a document to the driver's license testing center in Columbia, and after taking written and oral examinations and paying the fees, he obtained a restricted driver's license.

¹The State filed an appeal as well, but the State's brief declares that it has abandoned its appeal.

The defendant denied telling Sergeant Sakich where he was going on August 24, 2005. He testified that Sergeant Sakick stopped him when he emerged from his vehicle to look in the trunk for the restricted license documents.

The defendant testified that on August 24, 2005, he was accompanied by his wife, Alice Smith. He testified that August 24 was the opening night of the celebration. His purpose in taking brochures to the celebration was to promote his business. He believed “horse people [were] quite a market for us.”

The defendant testified that he was driving his vehicle within the times specified by the terms of his restricted license when Sergeant Sakick stopped him on August 24.²

On cross-examination, the defendant said that he filled out the restricted license documents on the same day – August 17, 2005 – that he entered a guilty plea to the first DRL charge. He admitted that the documents referenced his DUI conviction, but he characterized the reference as a “typographical error.” He testified that he was assisted in his restricted license documents by his attorney on the first DRL case, who was not the same attorney who represented him on the DUI. He testified that the documents were signed by the “judge in the courtroom” presiding over the first DRL case. He testified that he pleaded guilty on the DRL on August 17, 2005, so he could get the restricted license.

He testified that, when stopped by Sergeant Sakich on August 24, 2005, he had his restricted license in the trunk of his car. He also had in the trunk plumbing fixtures that he was returning to Lowe’s from one of his construction sites.

The defendant agreed that on or after September 30, 2005, he received a letter from the Department of Safety advising him that he was ineligible for a restricted license.

Alice Smith testified that she was involved with her husband in the steel building business and in real estate development. She was riding with the defendant when Sergeant Sakich stopped him on August 24, 2005. She did not recall any conversation during the traffic stop about the Smiths’ destination. She stated that no one mentioned “going to the grocery store.” She testified they were en route to the celebration to post brochures, and then to Lowe’s to exchange the plumbing materials they carried in the trunk of their car. She testified that Sergeant Sakich insisted that she and the defendant remain in their car during the traffic stop. When she eventually got home following the stop, she found the restricted license inside the defendant’s business folder in the car trunk.

²No evidence revealed either the day of the week or the hour of the day when Sergeant Sakich stopped the defendant.

Seth Arnold testified that he was a general contractor in August 2005 for houses being built by the defendant. On August 24, 2005, the defendant and his wife came to the construction site “to go over payroll.” They said they were going to the celebration to distribute brochures.

The “Order for Restricted License” exhibited to the bench trial contained a heading with blanks for indicating the underlying conviction. These blanks were filled in to indicate:

Charge	DUI 1 [first]
Court	General Sessions
Date of Arrest	6-12-05
Conviction Date	2-2-05
Date of Hearing	2-2-05
Docket Number	50070-118-97
Disposition	Guilty – 11/29
All suspended but 48 hours	

The August 17, 2005 order announced a finding that the defendant had been convicted of DUI. The order stated that the restricted license is “temporary and subject to revocation if the department determines that [the defendant is] not eligible” and that the order “is only good until the department has had an opportunity to make a final determination of eligibility for [a] restricted license.” The order provided for “permissive driving time” of Monday through Saturday, 6:00 a.m. to 8:30 p.m. The order stated that the permissive scope of restricted driving was “to and from home and place of employment and while in the actual performance of duties, if required.”

Conviction records introduced at trial establish the defendant’s February 2, 2005 DUI conviction and resulting driver’s license revocation, as well as his August 17, 2005 conviction of first-offense DRL.

The circuit court held that the restricted license held by the defendant on August 24, 2005, precluded him from being per se guilty of DRL. However, the court concluded that the defendant “was driving outside of his restrictions” based upon the testimony of the two officers that the defendant stated he was going to the grocery store. On appeal, the defendant challenges this determination.

When an accused challenges the sufficiency of the evidence, an appellate court’s standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). The rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

In determining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Id.* at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). This court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

“A person who drives a motor vehicle . . . at a time when the person’s privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor.” T.C.A. § 55-50-504 (a)(1) (2004). “A second or subsequent violation of subdivision (a)(1) is a Class A misdemeanor.” *Id.* at § 55-50-504(a)(2).

Given the August 17, 2005 issuance of a restricted driver’s license, the trial court determined that the defendant did not per se commit DRL on August 24, 2005, even if he were ineligible for such restricted license. That determination notwithstanding, the trial court, relying upon the testimony about “going to the grocery store,” held that the defendant’s driving on August 24 was beyond the scope of the restrictions imposed by the general sessions court’s August 17 order. On that basis, it convicted the defendant of DRL, second offense.

We need not revisit the trial court’s holding with respect to the effect of the defendant’s ineligibility for a restricted license upon his liability for a new DRL offense because we hold that the evidence supports the trial court’s ruling that, in any event, the defendant violated the terms of the restricted license.

The trial judge, as the trier of fact, accredited the officers’ testimony that the defendant said he was en route to the grocery store. It lies within the exclusive province of the trier of fact to determine the credibility of witnesses and to resolve factual conflicts in evidence. The appellate court may not revisit those determinations.

Accordingly, the judgment of the circuit court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE